

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Linkscorp Tennessee Three LLC)
 Dist. L01, Block 59, Parcels 00106C, 00184, 00185,) Shelby County
 00188C and 00199C)
 Multiple Classes)
 Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued at \$4,707,900 as summarized in exhibit A.

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on July 10, 2007 in Memphis, Tennessee. In attendance at the hearing were registered agent Walter Benedict, Jr. and Shelby County Property Assessor's representative Larry Bankston, TCA.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an 18 hole golf course commonly referred to as the “Stonebridge Golf Club” located at 3049 Davies-Plantation Road in Lakeland, Tennessee.

The taxpayer contended that subject property should be valued at \$2,076,853. In support of this position, the income approach was introduced into evidence. Mr. Benedict maintained that the income approach results in a value indication of \$2,268,153 for the real and personal property as a whole. In order to arrive at the value of the real property alone, Mr. Benedict deducted \$191,300 which represents the 2006 reported value of the personal property for ad valorem tax purposes.

The taxpayer's methodology was based upon a recent decision of the Assessment Appeals Commission in *Linkscorp Tennessee Six, LLC* (Davidson Co., Tax Years 2004, 2005 and 2006) (June 28, 2007) [hereafter referred to as "*Nashboro Golf Course*"]. Essentially, Mr. Benedict capitalized the average net operating income from 2003-2005 by a loaded capitalization rate of 12.69%.

The assessor contended that subject property should remain valued at \$4,707,900. In support of this position, several vacant land sales and the cost approach were introduced into evidence. In addition, Mr. Bankston testified that he had been advised by Ben Blake of Linkscorp-Illinois that subject property is currently on the market for approximately \$4,000,000. Finally, Mr. Bankston noted that subject real property had been appraised at \$3,700,000 in 2003 by the same appraiser, Laurence Hirsh, who testified before the Assessment Appeals Commission in *Nashboro Golf Course*.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$4,707,900 based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization. The administrative judge recognizes that additional evidence might very well support a reduction in value. However, the administrative judge finds that insufficient evidence was introduced to substantiate the taxpayer's \$2,076,853 contention of value.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds it appropriate for Mr. Benedict to rely on the Commission's recent ruling in the *Nashboro Golf Course* appeal. However, the administrative judge finds that the proof in the two appeals is so vastly different from a qualitative standpoint that Mr. Benedict's analysis must be rejected in its entirety.

The administrative judge finds that in the *Nashboro Golf Course* appeal the taxpayer relied on the testimony and analysis of Laurence A. Hirsh, MAI. The administrative judge finds Mr. Hirsh actually appraised the golf course at issue and was qualified as a bona fide expert in golf course valuation.

Respectfully, the administrative judge finds that Mr. Benedict did not appraise subject property and by his own admission is "not qualified to do commercial appraisals." The administrative judge finds that Mr. Benedict is registered with the State Board of Equalization pursuant to Tenn. Code Ann. § 67-5-1514 and unquestionably has the right to represent taxpayers at hearings. However, the administrative judge finds that the right to represent a taxpayer at a hearing does not transform the agent into an expert.

The administrative judge finds that Mr. Benedict is licensed to appraise residential property in Georgia.¹ The administrative judge finds that residential appraisers are not normally qualified to appraise commercial property, let alone a specialized property such as a golf course.

The administrative judge finds that for all practical purposes Mr. Benedict asserted a golf course can be appraised for ad valorem tax purposes by simply averaging the actual net operating income for the preceding three years and capitalizing it at an appropriate rate. The

¹ Mr. Benedict apparently misunderstood the administrative judge's query and testified he was licensed in Tennessee. The apparent confusion was clarified in Mr. Benedict's filing of July 17, 2007.

administrative judge must respectfully reject the proposition that such a simplistic “fill-in-the-blank” approach constitutes sufficient evidence by which to reliably establish the market value of a golf course.

The administrative judge finds that simply averaging net operating income has no probative value when competing properties have not been analyzed and the subject’s income has differed significantly from one year to the next. For example, Mr. Benedict’s exhibit indicated that the actual NOI in 2003, 2004 and 2005 was \$331,168, \$226,226 and \$306,092 respectively.

The administrative judge finds Mr. Benedict’s testimony especially troubling when asked about subject property being offered for sale at approximately \$4,000,000. Mr. Benedict seemingly testified in substance that the property owner was in the process of refinancing and was seeking a higher value for that purpose. Mr. Benedict declined to elaborate any further after realizing his testimony was on the record.²

The administrative judge also finds it puzzling why Mr. Benedict ignored Mr. Hirsh’s prior appraisal of subject property when he was, in fact, relying on Mr. Hirsh’s analysis in the *Nashboro Golf Course* appeal. According to Mr. Bankston, Mr. Hirsh appraised the property as a whole at \$4,000,000. He deducted \$300,000 to account for the personal property leaving \$3,700,000 attributable to the real property.

Based upon the foregoing, the administrative judge finds that Mr. Benedict’s analysis has no probative value and must be rejected in its entirety. Accordingly, the administrative judge has no choice except to affirm the current appraisal of subject property based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization.

ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit A are hereby adopted for tax year 2006.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be**

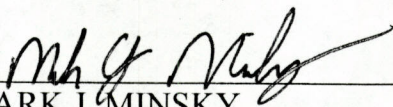
² The administrative judge does not understand how Mr. Benedict could have assumed his testimony was somehow off the record. The hearing was in progress and neither party had requested to go off the record for any purpose.

filed within thirty (30) days from the date the initial decision is sent.”
Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 31st day of July, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Walter H. Benedict, Jr.
Tameaka Stanton-Riley, Appeals Manager

EXHIBIT A

<u>PARCEL</u>	<u>LAND VALUE (\$)</u>	<u>IMPROVEMENT VALUE (\$)</u>	<u>TOTAL VALUE (\$)</u>	<u>ASSESSMENT (\$)</u>
L01-59-00106C	1,301,400	1,438,000	2,739,400	772,270
L01-59-00184	269,400	197,900	467,300	116,825
L01-59-00185	93,600	99,000	192,600	48,150
L01-59-00188C	401,500	296,900	698,400	234,825
L01-59-00199C	313,300	296,900	610,200	199,545